

AMENDED IN SENATE JUNE 27, 2003
AMENDED IN ASSEMBLY MAY 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1144

Introduced by Assembly Member Pavley

February 21, 2003

An act to add Sections 89539.1 and 89539.2 to the Education Code, relating to the California State University.

LEGISLATIVE COUNSEL'S DIGEST

AB 1144, as amended, Pavley. California State University: employees.

Existing law establishes the California State University and its various campuses under the administration of the Trustees of the California State University. Existing law authorizes the trustees to hire employees to carry on the functions of the university. A provision of the California Constitution exempts officers and employees of the California State University from the state civil service.

Existing law, known as the State Civil Service Act, provides civil service employees who are appealing notices of adverse action with certain procedural rights, including, among other rights, the ability to obtain discovery of documents in the possession of the employer. The act also provides civil service employees with disabilities to challenge their employer's denial of a request for reasonable accommodation.

This bill would provide employees of the California State University who are appealing notices of adverse actions with procedural rights that

are similar to those granted to civil service employees under the State Civil Service Act.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 89539.1 is added to the Education Code,
2 to read:

3 89539.1. ~~(a) An employee who has been served with notice~~
4 ~~of dismissal, suspension, or demotion for cause, or a representative~~
5 ~~designated by the employee, shall have the right to inspect any~~
6 ~~documents in the possession of, or under the control of, the trustees~~
7 ~~that are relevant to the action taken or that would constitute~~
8 ~~“relevant evidence,” as defined in Section 210 of the Evidence~~
9 ~~Code. The employee, or the designated representative, shall also~~
10 ~~have the right to interview other employees having knowledge of~~
11 ~~the acts or omissions upon which the adverse action was based.~~
12 ~~Interviews of other employees and inspection of documents shall~~
13 ~~be at times and places reasonable for the employee, who has been~~
14 ~~served with the notice of the adverse action, and for the trustees.~~

15 ~~(b) The trustees shall make all reasonable efforts necessary to~~
16 ~~ensure the cooperation of any other employees interviewed~~
17 ~~pursuant to this section. Code.~~

18 SEC. 2. Section 89539.2 is added to the Education Code, to
19 read:

20 89539.2. (a) Any party claiming that his or her request for
21 discovery pursuant to Section 89539.1 has not been complied with
22 may serve and file a petition to compel discovery with the Hearing
23 Office of the State Personnel Board, naming as the respondent the
24 party refusing or failing to comply with Section 89539.1. The
25 petition shall state facts showing that the respondent party failed
26 or refused to comply with Section 89539.1, a description of the
27 matters sought to be discovered, the reason or reasons why the
28 matter is discoverable under Section 89539.1, and the ground or
29 grounds of the respondent’s refusal so far as known to the
30 petitioner.

31 (b) (1) The petition shall be served upon respondent party, and
32 filed within 14 days after the respondent party first evidenced his
33 or her failure or refusal to comply with Section 89539.1, or within

1 30 days after the request was made and the party has failed to reply
2 to the request, whichever period is longer. However, no petition
3 may be filed within 15 days of the date set for commencement of
4 the administrative hearing, except upon a petition and a
5 determination by the administrative law judge of good cause. In
6 determining good cause, the administrative law judge shall
7 consider the necessity and reasons for the discovery, the diligence
8 or lack of diligence of the moving party, whether the granting of
9 the petition will delay the commencement of the administrative
10 hearing on the date set, and the possible prejudice of the action to
11 any party.

12 (2) The respondent shall have a right to file a written answer to
13 the petition. Any answer shall be filed with the Hearing Office of
14 the State Personnel Board and the petitioner within 15 days of
15 service of the petition.

16 (3) Unless otherwise stipulated by the parties and as provided
17 by this section, the administrative law judge shall review the
18 petition and any response filed by the respondent and issue a
19 decision granting or denying the petition within 20 days after the
20 filing of the petition. Nothing in this section shall preclude the
21 administrative law judge from determining that an evidentiary
22 hearing shall be conducted prior to the issuance of a decision on
23 the petition. In the event that a hearing is ordered, the decision of
24 the administrative law judge shall be issued within 20 days of the
25 closing of the hearing.

26 (4) A party aggrieved by the decision of the administrative law
27 judge may, within 30 days of service of the decision, file a petition
28 to compel discovery in the superior court for the county in which
29 the administrative hearing will be held or in the county in which
30 the headquarters of the trustees is located. The petition shall be
31 served on the respondent party.

32 (c) If, from a reading of the petition, the court is satisfied that
33 the petition sets forth good cause for relief, the court shall issue an
34 order to show cause directed to the respondent party; otherwise the
35 court shall enter an order denying the petition. The order to show
36 cause shall be served upon the respondent and his or her attorney
37 of record in the administrative proceeding by personal delivery or
38 certified mail, and shall be returnable no earlier than 10 days from
39 its issuance nor later than 30 days after the filing of the petition.

1 The respondent party shall have the right to serve and file a written
2 answer or other response to the petition and order to show cause.

3 (d) The court may, in its discretion, order the administrative
4 proceeding stayed during the pendency of the proceeding, and, if
5 necessary, for a reasonable time thereafter to afford the parties time
6 to comply with the court order.

7 (e) Where the matter sought to be discovered is under the
8 custody or control of the respondent party and the respondent party
9 asserts that the matter is not a discoverable matter under Section
10 89539.1, or is privileged against disclosure under Section
11 89539.1, the court may order lodged with it matters that are
12 provided in subdivision (b) of Section 915 of the Evidence Code,
13 and shall examine the matters in accordance with the provisions
14 thereof.

15 (f) The court shall decide the case on the matters examined by
16 the court in camera, the papers filed by the parties, and any oral
17 argument and additional evidence as the court may allow.

18 (g) Unless otherwise stipulated by the parties, the court shall,
19 no later than 45 days after the filing of the petition, file its order
20 denying or granting the petition. However, the court may, on its
21 own motion, for good cause, extend the time an additional 45 days.
22 The order of the court shall be in writing, setting forth the matters
23 or parts the petitioner is entitled to discover under Section
24 89539.1. A copy of the order shall forthwith be served by mail by
25 the clerk upon the parties. Where the order grants the petition in
26 whole or in part, the order shall not become effective until 10 days
27 after the date the order is served by the clerk. Where the order
28 denies relief to the petitioning party, the order shall be effective on
29 the date it is served by the clerk.

30 (h) (1) The order of the superior court shall be final and, except
31 for this subdivision, shall not be subject to review by appeal. A
32 party aggrieved by the order, or any part thereof, may within 30
33 days after the service of the superior court's order serve and file in
34 the district court of appeal for the district in which the superior
35 court is located, a petition for a writ of mandamus to compel the
36 superior court to set aside, or otherwise modify, its order.

37 (2) Where a review is sought from an order granting discovery,
38 the order of the trial court and the administrative proceeding shall
39 be stayed upon the filing of the petition for writ of mandamus.
40 However, the court of appeal may dissolve or modify the stay

1 thereafter, if it is in the public interest to do so. Where the review
2 is sought from a denial of discovery, neither the trial court's order
3 nor the administrative proceeding shall be stayed by the court of
4 appeal except upon a clear showing of probable error.

5 (i) Where the superior court finds that a party or his or her
6 attorney, without substantial justification, failed or refused to
7 comply with Section 89539.1, or, without substantial justification,
8 filed a petition to compel discovery pursuant to this section, or,
9 without substantial justification, failed to comply with any order
10 of court made pursuant to this section, the court may award court
11 costs and reasonable attorney fees to the opposing party. Nothing
12 in this subdivision shall limit the power of the superior court to
13 compel obedience to its orders by contempt proceedings.

